ARTICLE 13 FINANCIAL GUARANTEE

DIVISION 1 GENERAL

Section 13.100 Financial Guarantee and Improvements Agreement Required.

Before any Land Use Permit for development subject to Limited Impact Review, Special Review, PUD, Subdivision or Cluster Subdivision is issued under this Code, the Board shall require the applicant to file a guarantee of financial security deemed adequate by the Board and payable to the County and execute an Improvements Agreement regarding the conditions and improvements identified as requirements of project approval. The purpose of the financial guarantee and Improvements Agreement is to assure the following:

- A. **Completion of Development and Reclamation of the Property**. The development is completed and, if applicable, that the property is properly reclaimed.
- B. **Conditions of Permit Fulfilled**. The applicant performs all improvements, mitigation requirements and permit conditions in connection with the construction, operation and termination of the development.
- C. **Permittee Addresses Responsibility for Impacts**. That increases in public facilities and services necessitated by the construction, operation and termination of the development are borne by the permittee.
- D. **County Revenue Shortfalls Offset**. That shortfalls to County revenues are offset in the event that the development is suspended, curtailed or abandoned.

Section 13.110 Amount of Financial Guarantee.

In determining the amount of the financial guarantee, the County shall consider the following factors:

- A. **Completion of Development and Reclamation of Property**. The estimated cost of completing the development improvements, and, if applicable, of returning the property to its original condition or to a condition acceptable to the County.
- B. **Conditions of Permit**. The estimated cost of performing all mitigation requirements and permit conditions in connection with the construction, operation, and termination of the development.

Section 13.120 Estimate.

Estimated cost shall be based on the applicant's submitted cost estimate plus the Board's estimate of the additional cost to the County of bringing in personnel and equipment to accomplish any unperformed purpose of the financial guarantee. The Board shall consider the

duration of the development or activity and compute a reasonable projection of increases due to inflation. The Board may require, as a condition of the permit, that the financial security be adjusted upon receipt of bids to perform the requirements of the permit and regulations.

Section 13.130 Form of Financial Guarantee.

The financial guarantee may be in any form acceptable to the Board and shall be set forth in an Improvement Agreement executed by the County and the Applicant.

Section 13.140 Release of Guarantee.

The financial guarantee may be released only when:

- A. The permit has been surrendered to the Board before commencement of any physical activity on the site of the permitted development; or
- B. The development has been abandoned and the site has been returned to its original condition or to a condition acceptable to the County; or
- C. The development has been satisfactorily completed; or
- D. A phase or phases of the development have been satisfactorily completed allowing for partial release of the financial guarantee consistent with Project phasing and as agreed to in the Improvements Agreement.

Section 13.150 Cancellation of the Financial Guarantee

Any financial guarantee may be canceled only upon the Board's written consent, which may be granted only when such cancellation will not detract from the purposes of the security.

Section 13.160 Forfeiture of Financial Guarantee

- A. **Written Notice**. If the Board determines that a financial guarantee should be forfeited because of any violation of the permit, mitigation requirements, conditions or any applicable Regulations adopted by the Board, it shall provide written notice to the surety and the permittee that the financial guarantee will be forfeited unless the permittee makes written demand to the Board, within thirty (30) days after permittee's receipt of notice, requesting a hearing before the Board. If no demand is made by the permittee within said period, then the Board shall order the financial guarantee forfeited.
- B. **Public Hearing and Action by the Board**. The Board shall hold a hearing within thirty (30) days after the receipt of the demand by the permittee. At the hearing, the permittee may present for the consideration of the Board statements, documents, and other information with respect to the alleged violation. At the conclusion of the hearing, the Board shall either withdraw the notice of violation or enter an order forfeiting the financial guarantee.

- C. **Default and Use of Deposit**. The deposit described above may be used by the Board in the event of the default or allowed default of the permit holder, only for the purposes of recovering on the surety or fulfilling the permit obligation of the permit holder. In the event that the ultimate reviewing court determines that there has been a default by the permit holder, that portion of any moneys expended by the County from the escrow funds relating to such default shall be replaced in the escrow account by the Board immediately following such determination. The County may arrange with a lending institution, which provides money for the permit holder, that said institution may hold in escrow any funds required for said deposit. Funds shall be disbursed out of escrow by the institution to the County upon County's demand for the purpose specified in this section.
- D. **Inadequate Revenue and Cost Recovery**. If the forfeiture results in inadequate revenue to cover the costs of accomplishing the purposes of the financial guarantee, the County's attorney shall take such steps as deemed proper to recover such costs where recovery is deemed possible.

Section 13.170 Substitute of Financial Guarantee

If the license to do business in Colorado of any surety upon a security filed pursuant to this regulation is suspended or revoked by any state authority, then the applicant shall within sixty (60) days after receiving notice thereof, substitute a good and sufficient surety licensed to do business in Colorado. Upon failure of the permittee to make substitution within the time allowed, the Board shall suspend the permit until proper substitution has been made.